These changes seem to indicate a belief that the rule did not express the actual intention of testators,—a belief that has been shared by eminent conveyancers.[10] O. K. M.

Adverse Possession: Possession by Married Woman.—In Madden v. Hall,[1] and Mattes v. Hall,[2] the owner of land left it in the possession of an agent. The wife of the agent, claiming the land as her own, but without any written instrument of title, and without notice to the owner of her adverse claim, held the land for the period of the statute of limitations and complied with the provisions respecting payment of taxes. Under these circumstances it was held that she did not acquire a title.

The case is doubtless correctly decided. She came into possession rightfully, through her husband, and it is in accord with well settled principles that her subsequent act of claiming possession for herself could not affect the real owner unless notice of the repudiation of her tenancy was actually brought home to him.[3]

The Court, however, rests its opinion upon the proposition that a married woman, while not separated from her husband, cannot acquire title by adverse possession, unless she has "color of title." The doctrine of "color of title" seems to have travelled far from its original source. Invented by the American courts to supply a need not felt in England, it allowed a possessor of only a portion of an entire tract to extend, by legal construction, his possession to the limits designated in the document under which he claimed.[4] Possession under color of title is not synonymous with possession in good faith, for one claiming under a parol gift does not claim under color of title. Yet it has been held that a married woman claiming under a parol gift may acquire title by adverse possession, even while living with her husband. To say generally, that a married woman, living with her husband, is wholly unable to maintain an adverse possession without color of title, as the Court seems to have done in the cases named, is, perhaps, stating the matter too broadly. The present condition of the authorities would seem to limit the ability of a married woman, while living with her husband, to acquire title to land by prescription, to cases where her original possession was acquired by consent of the former possessor.[5] Whether she entered under "color of title" in the technical sense is, therefore, immaterial.

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[10] Mr. Jarman says: "It is probably in general the case" that the "devisee was intended to take cum onere." 2 Jarman, Wills, p. 1445.

[1] (District Court of Appeal, Third Appellate District, March 25, 1913), 16 Cal. App. Dec. 614.

[2] (District Court of Appeal, Third Appellate District, March 25, 1913), 16 Cal. App. Dec. 605.

[3] 2 Tiffany, Real Property, sec. 443. The recent case of Gernon v. Sisson, 16 Cal. App. Dec. 249 (decided February 7, 1913), applies this principle to the case of a grantor remaining in possession after the date of the conveyance to his grantee.

[4] 23 Harvard Law Review, 56.

[5] See cases cited in note in Ann. Cas. 1912A, 570.

The character of property acquired by either spouse by adverse possession with reference to the distinction between separate and community property gives rise to some interesting questions. Where a married woman living separate from her husband acquired such title, it was held to be her separate property, as "accumulations" made while living separate and apart from her husband.[6] But her "accumulations," while not separated from her husband, are not declared to be her separate property by statute, and the husband's "accumulations" are always community property. Suppose, therefore, that an unmarried woman or an unmarried man buys property, the title of which is defective, and after marriage he or she perfects the title by adverse possession, will the proper limits of statutory interpretation permit it to be said that the property is the separate property of such spouse? The suggestion made in the case of Union Oil Company v. Stewart that the property might possibly be regarded as conveyed during coverture rests on an absolutely erroneous notion of the nature of title by adverse possession, and, while, if followed, it might serve very well to accomplish a desirable result with reference to the wife's property, would leave the situation with regard to the husband's property in just as bad a condition as if the suggestion had not been followed.

O. K. M.

Assignment of Choses In Action: Priority of Party Who First Gives Notice.—The case of Wideman v. Weininger [1] involves the rights of successive assignees of a chose in action. The court affirms the rule adopted in Graham Paper Company v. Pembroke,[2] as follows: "As between successive assignees of a chose in action, he will have the preference who first gives notice to the debtor, even if he be a subsequent assignee, provided at the time of taking it he had no notice of the prior assignment." If the assignee omits to give notice to the debtor of the assignment, he is "guilty of the same degree and species of neglect as he who leaves a personal chattel, to which he has acquired title, in the actual possession and under the control of another person." Before the Pembroke case, (which does not notice the previous line of authorities) [3] the rule in California had been firmly established, that the assignee of a chose in action obtained a per-

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[6] Union Oil Company v. Stewart, 158 Cal. 149; 110 Pac. 313; Ann. Cas. 1912A, 567. Civil Code, Cal. sec. 169.

[1] Wideman v. Weininger (1913), 45 Cal. Dec. 185, 130 Pac. 421.

[2] Graham Paper Company v. Pembroke (1899), 124 Cal. 117, 56 Pac. 627.

[3] Fore v. Manlove (1861), 18 Cal. 437; Walling v. Miller & Co. (1860) 15 Cal. 38; Mitchell v. Hockett et al. (1864), 25 Cal. 539; Southard v. McBrown (1883), 63 Cal. 545; After Pembroke case; Curtin v. Kowalsky (1904), 145 Cal. 431, 78 Pac. 962; Title Insurance Co. v. Williamson (1912), 18 Cal. App. 324, 123 Pac. 245. But see Title Ins. & Trust Co. v. Carpenter & Beles Mills & Lumber Co. (1912), 123 Pac. 247; (not officially reported) Cal.